

1 2. Answering paragraph 2 of the Counterclaim, Plaintiff and
2 Counterdefendant admits that Horng is a corporation organized and
3 existing under the laws of Taiwan, but denies that its principal
4 place of business is located in Taipei, Taiwan.

5 Jurisdiction and Venue

6 3. Answering paragraph 3 of the Counterclaim, Plaintiff and
7 Counterdefendant admits that Horng sold product to Sakar
8 International, Inc. ("Sakar") in the United States. Except as so
9 admitted, Plaintiff and Counterdefendant is without sufficient
10 knowledge or information to form a belief as to the truth of the
11 allegations contained in said paragraph, and on that basis denies
12 each and every allegation contained therein.

13 4. Answering paragraph 4 of the Counterclaim, Plaintiff and
14 Counterdefendant is without sufficient knowledge or information to
15 form a belief as to the truth of the allegations contained in said
16 paragraph, and on that basis denies each and every allegation
17 contained therein.

18 5. Answering paragraph 5 of the Counterclaim, Plaintiff and
19 Counterdefendant is without sufficient knowledge or information to
20 form a belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation
22 contained therein.

23 Count 1

24 Claim For Indemnification For Patent Infringement

25 6. Answering paragraph 6 of the Counterclaim, Plaintiff and
26 Counterdefendant admits that Sakar is asserting a counterclaim for
27 indemnification and full defense against Horng. Except as so
28 admitted, Plaintiff and Counterdefendant is without sufficient

1 knowledge or information to form a belief as to the truth of the
2 allegations contained in said paragraph, and on that basis denies
3 each and every allegation contained therein.

4 7. Answering paragraph 7 of the Counterclaim, Plaintiff and
5 Counterdefendant admits that Sakar purchased optical mice from Hong.
6 Except as so admitted, Plaintiff and Counterdefendant is without
7 sufficient knowledge or information to form a belief as to the truth
8 of the allegations contained in said paragraph, and on that basis
9 denies each and every allegation contained therein.

10 8. Answering paragraph 8 of the Counterclaim, Plaintiff and
11 Counterdefendant is without sufficient knowledge or information to
12 form a belief as to the truth of the allegations contained in said
13 paragraph, and on that basis denies each and every allegation
14 contained therein.

15 9. Answering paragraph 9 of the Counterclaim, Plaintiff and
16 Counterdefendant admits that Sakar purchased product from Horng, and
17 Sakar was supplied with optical mice products by Horng. Except as
18 so admitted, Plaintiff and Counterdefendant is without sufficient
19 knowledge or information to form a belief as to the truth of the
20 allegations contained in said paragraph, and on that basis denies
21 each and every allegation contained therein.

22 10. Answering paragraph 10 of the Counterclaim, Plaintiff and
23 Counterdefendant denies each and every allegation contained therein.

24 11. Answering paragraph 11 of the Counterclaim, Plaintiff and
25 Counterdefendant is without sufficient knowledge or information to
26 form a belief as to the truth of the allegations contained in said
27 paragraph, and on that basis denies each and every allegation
28 contained therein.

1 12. Answering paragraph 12 of the Counterclaim, Plaintiff and
2 Counterdefendant denies each and every allegation contained therein.

3 13. Answering paragraph 13 of the Counterclaim, Plaintiff and
4 Counterdefendant denies each and every allegation contained therein.

5 Count 2

6 Claim For Defective Products

7 14. Answering paragraph 14 of the Counterclaim, Plaintiff and
8 Counterdefendant is without sufficient knowledge or information to
9 form a belief as to the truth of the allegations contained in said
10 paragraph, and on that basis denies each and every allegation
11 contained therein.

12 15. Answering paragraph 15 of the Counterclaim, Plaintiff and
13 Counterdefendant admits that Sakar returned products to Horng.
14 Except as so admitted, Plaintiff and Counterdefendant is without
15 sufficient knowledge or information to form a belief as to the truth
16 of the allegations contained in said paragraph, and on that basis
17 denies each and every allegation contained therein.

18 16. Answering paragraph 16 of the Counterclaim, Plaintiff and
19 Counterdefendant denies each and every allegation contained therein.

20 17. Answering paragraph 17 of the Counterclaim, Plaintiff and
21 Counterdefendant denies each and every allegation contained therein.

22 18. Answering paragraph 18 of the Counterclaim, Plaintiff and
23 Counterdefendant denies each and every allegation contained therein.

24 Count 3

25 Breach of Implied Warranties

26 19. Answering paragraph 19 of the Counterclaim, Plaintiff and
27 Counterdefendant denies that the optical computer mice Sakar
28 purchased from Horng were not specially manufactured by Horng for

1 Sakar. Plaintiff and Counterdefendant is without sufficient
2 knowledge or information to form a belief as to the truth of the rest
3 of the allegations contained in said paragraph, and on that basis
4 denies each and every allegation contained therein.

5 20. Answering paragraph 20 of the Counterclaim, Plaintiff and
6 Counterdefendant denies each and every allegation contained therein.

7 21. Answering paragraph 21 of the Counterclaim, Plaintiff and
8 Counterdefendant is without sufficient knowledge or information to
9 form a belief as to the truth of the allegations contained in said
10 paragraph, and on that basis denies each and every allegation
11 contained therein.

12 22. Answering paragraph 22 of the Counterclaim, Plaintiff and
13 Counterdefendant is without sufficient knowledge or information to
14 form a belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation
16 contained therein.

17 23. Answering paragraph 23 of the Counterclaim, Plaintiff and
18 Counterdefendant denies each and every allegation contained therein.

19 FIRST AFFIRMATIVE DEFENSE

20 24. The Counterclaim fails to state a claim upon which relief
21 may be granted.

22 SECOND AFFIRMATIVE DEFENSE

23 25. Defendant and Counterclaimant failed to take proper and
24 reasonable steps to avoid or to mitigate the damages alleged and, to
25 the extent of such failure to mitigate or to avoid damages, any
26 recovery by plaintiffs should be reduced accordingly.

27 THIRD AFFIRMATIVE DEFENSE

28 26. Defendant and Counterclaimant's claims are barred the

1 equitable doctrine of estoppel.

2 FOURTH AFFIRMATIVE DEFENSE

3 27. Defendant and Counterclaimant's claims are barred due to
4 Defendant and Counterclaimant's unclean hands.

5 FIFTH AFFIRMATIVE DEFENSE

6 28. Defendant and Counterclaimant's claims are barred by the
7 equitable doctrine of laches.

8 SIXTH AFFIRMATIVE DEFENSE

9 29. Defendant and Counterclaimant's claims are barred by the
10 equitable doctrine of waiver.

11 SEVENTH AFFIRMATIVE DEFENSE

12 30. Defendant and Counterclaimant's claims are barred by
13 Defendant and Counterclaimant's knowledge, consent, and acquiescence.

14 EIGHTH AFFIRMATIVE DEFENSE

15 31. The goods sold by Plaintiff and Counterdefendant to
16 Defendant and Counterclaimant were furnished only after receipt of,
17 and in compliance with, Defendant and Counterclaimant's own
18 specifications therefor, and any breach of the warranty against
19 infringement that allegedly may have occurred, proximately resulted
20 from Plaintiff and Counterdefendant's compliance with Defendant and
21 Counterclaimant's specifications. Defendant and Counterclaimant,
22 therefore, is required to hold Plaintiff and Counterdefendant
23 harmless against any claim for infringement arising from the sale.

24 NINTH AFFIRMATIVE DEFENSE

25 32. Plaintiff and Counterdefendant has not infringed the
26 patents of GREAT LAKES INTELLECTUAL PROPERTY LIMITED ("GLIP") as to
27 optical mice sold by Horng to Sakar.

28 TENTH AFFIRMATIVE DEFENSE

1 33. GLIP's patents as to optical mice which form the basis for
2 GLIP's patent infringement action against Sakar are invalid, void and
3 unenforceable because:

4 (a) The alleged invention of said patents was known or used
5 by others in this country or patented or described in
6 a printed publication in this or a foreign country,
7 before the invention thereof by the applicant for
8 patents.

9 (b) The alleged invention of said patents was patented or
10 described in a printed publication in this or a foreign
11 country or in public use or on sale in this country,
12 more than one year prior to the date of the
13 applications for patents in the United States.

14 (c) The alleged invention of said patents was described in
15 a patent granted on an application for patent by
16 another filed in the United States before the invention
17 thereof by the applicant for patents.

18 (d) GLIP did not itself invent the subject matter
19 of said patent.

20 (e) Before GLIP's alleged invention thereof, the
21 inventions were made in this country by others who had
22 not abandoned, suppressed or concealed them.

23 (f) GLIP's patents for optical mice which form the basis
24 for GLIP's patent infringement action against Sakar
25 describe and claim alleged inventions, the making of
26 which did not involve the inventive faculty but only
27 the obvious judgment, knowledge and mechanical skill
28 possessed by persons having ordinary skill in the art

1 to which the alleged invention pertains. The subject
2 matter claimed in said patent fails to comply with
3 Title 35, § 102 and § 103 of the United States Code in
4 that the differences between the subject matter claimed
5 in such patent and the prior art are such that the
6 subject matter as a whole was either fully anticipated
7 by the prior art or would have been obvious at the time
8 the alleged invention was made to a person having
9 knowledge of such prior art and having ordinary skill
10 in the art to which such claimed subject matter
11 pertains.

12 (g) GLIP's patents as to optical mice which form the basis
13 for GLIP's patent infringement action against Sakar
14 do not contain a written description of the invention,
15 and of the manner and process of making and using
16 it, in such full, clear, concise, and exact terms
17 as required by the statutes of the United States
18 to enable any person skilled in the art to practice
19 the invention purported to be covered thereby.

20 (h) GLIP's patents as to optical mice which form the basis
21 for GLIP's patent infringement action against Sakar do
22 not set forth the best mode contemplated by the
23 inventor of carrying out the invention purported to be
24 covered thereby.

25 (i) The claims of GLIP's patents as to optical mice which
26 form the basis for GLIP's patent infringement action
27 against Sakar are fatally vague and indefinite, and
28 therefore invalid and void, because they do not

1 particularly point out and distinctly claim the subject
2 matter of the alleged invention, as required by Title
3 35, § 112 of the United States Code.

4 34. Other particulars with respect to the grounds of patent
5 invalidity above set forth will be furnished to Defendant and
6 Counterclaimant in writing by Plaintiff and Counterdefendant
7 at least thirty (30) days before the trial of this cause in
8 compliance with Title 35 § 282 of the United States Code. Any
9 additional grounds of invalidity of said patent of which Plaintiff
10 and Counterdefendant may hereinafter learn will be brought to
11 Defendant and Counterclaimant's notice by appropriate proceedings.

12 35. Plaintiff and Counterdefendant avers that, by reason of
13 proceedings taken in the United States Patent and Trademark Office
14 during the prosecution of the applications for GLIP's patents as to
15 optical mice which form the basis for GLIP's patent infringement
16 action against Sakar, the claims of said patents are limited and
17 restricted by their terms and the prior art and are made so by
18 limitations and restrictions made therein under the requirements of
19 the Commission of Patents and Trademarks during the proceedings in
20 the Patent and Trademark Office while the applications for said
21 patents were pending, to the extent that GLIP is now estopped from
22 maintaining said patents to be of such scope as to cover or embrace
23 any optical mice sold by Plaintiff and Counterdefendant.

24 36. The Patent and Trademark Office Examiner failed to cite
25 pertinent prior art as references and thus the presumption of
26 validity of said patents in suit provided in Title 35 § 282 of the
27 United States Code is greatly weakened or destroyed.

28 37. GLIP's patents as to optical mice which form the basis for

1 GLIP's patent infringement action against Sakar are unenforceable
2 since they were obtained by fraud in that the applicant failed to
3 call to the attention of the Patent Examiner prior art, public
4 knowledge and uses of which he had knowledge and over which the
5 alleged inventions were not patentable.

6 38. GLIP has so misused the patents in suit as to optical mice
7 which form the basis for GLIP's patent infringement action against
8 Sakar as to render them unenforceable.

9 39. Plaintiff and Counterdefendant has not done any act or
10 thing and is not proposing to do any act or thing in violation of any
11 rights validly belonging to GLIP under the said patents. The patents
12 in suit are invalid and unenforceable, are not infringed by this
13 Plaintiff and Counterdefendant, and this Plaintiff and
14 Counterdefendant is not liable for infringement of said patents.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 40. Before entering into the contract for the sale of goods
17 herein, Horng fully made available a sample of the goods for Sakar's
18 examination and expressly invited Sakar to make such an examination,
19 and Sakar either did so or refused to so examine. Such defects as
20 Sakar alleges to have been present in the goods ought to have been
21 revealed to Sakar through such an examination.

22 TWELFTH AFFIRMATIVE DEFENSE

23 41. Any implied warranty of merchantability with regard to the
24 goods sold to Sakar was excluded by course of dealing, in that the
25 parties have dealt between themselves prior thereto in such a product
26 with the express understanding, based on their earliest dealings,
27 that Horng made no such representation or guarantee as to the
28 character of the goods.

THIRTEENTH AFFIRMATIVE DEFENSE

42. Any implied warranty of fitness for a particular purpose with regard to the goods sold to Sakar was excluded by course of dealing, in that the parties have dealt between themselves prior thereto in such a product with the express understanding, based on their earliest dealings, that Horng made no such representation or guarantee as to the character of the goods.

FOURTEENTH AFFIRMATIVE DEFENSE

43. Horng is a manufacturer of computer accessories.

44. Sakar is a merchant engaged in the wholesaling of computer accessories.

45. In the year 2004, Horng delivered optical mice to Sakar in accordance with the specifications contained in the contract between Horng and Sakar.

46. Sakar subsequently notified Horng that it was dissatisfied with the subject goods. That notification was not made within a reasonable time after Sakar should have discovered any such defects in the subject goods.

47. Horng thereafter requested that Sakar particularize its dissatisfaction with the accepted goods, but Sakar failed to do so.

48. Sakar's failure to particularize any alleged defects in the subject goods, and thus, to allow Horng an opportunity to cure them, and Sakar's failure to notify Horng of any alleged nonconformity in the subject goods within a reasonable time after it should have discovered such defects, precludes Sakar from recovering from Horng any damages resulting from any alleged breach by Horng.

WHEREFORE, Plaintiff and Counterdefendant demands judgment against Defendant and Counterclaimant and prays that:

1. The Counterclaim be dismissed with prejudice;

2 2. An order, judgment, and decree be granted declaring that
3 Defendant and Counterclaimant is without right or authority to
4 threaten or maintain suit against Plaintiff and Counterdefendant for
5 indemnity based on GLIP's suit against Defendant and Counterclaimant
6 for patent infringement; that said patents are invalid,
7 unenforceable, and void in law; and that said patents are not
8 infringed by Plaintiff and Counterdefendant because of the making,
9 selling, or using of optical mice component made, sold, or used by
10 Defendant.


11 3. Judgment be entered for costs and reasonable attorney fees
12 incurred by Plaintiff and Counterdefendant herein.

13 4. Such other and further relief as the Court may deem
14 appropriate.

15 JURY DEMAND

16 Horng hereby demands a jury trial on all issues raised in
17 Horng's complaint and Sakar's counterclaim.

18 Dated: November 4, 2005



BRUCE W. WAGNER
Attorney for Plaintiff and
Counterdefendant
HORNG TECHNICAL ENTERPRISE CO.,
LTD.

PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the above-entitled cause. On November 4, 2005, I served a true copy of REPLY TO COUNTERCLAIM by depositing it in the United States Mail in a sealed enveloped with the postage thereon fully prepaid to the following:

Christopher C. McNatt, Jr., Esq.
SANDLER, TRAVIS & ROSENBERG
AND GLAD & FERGUSON, P.C.
801 South Flower Street, Fifth Floor
Los Angeles, California 90017

Place of Mailing: Fullerton, California

Executed on November 4, 2005, at Fullerton, California.

I hereby certify that I am a member of the Bar of the United States District Court,
Central District of California.



BRUCE W. WAGNER